

Appl. No. 10/630,502
Atty. Docket No. P-138
Response: December 14, 2005
Customer No. 27752

REMARKS

Claims 1-27 are pending in the present application. Claims 1-18 have been withdrawn.

Claims 19, 21-27 have been amended. The support for the amendment is found in the claims as filed and page 2, lines 26-29 of the present specification.

It is believed these changes do not involve any introduction of new matter.

Consequently, entry of these changes is believed to be in order and is respectfully requested.

The Rejection Under 35 USC § 112, second paragraph

The Examiner has rejected Claim 25 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants respectfully traverse this rejection based on the remarks contained herein.

In *Texas Instruments Inc. v. U.S. Int'l Trade Comm'n*, 871 F.2d 1054, 10 USPQ2d 1257 (Fed. Cir. 1989), the Court held that "the public is entitled to know the scope of the claims but must look to both the patent specification and the prosecution history...". Additionally, in *North American Vaccine, Inc v. American Cyanamid Co.*, 7 F.3d 1571, 28 USPQ2d 1333 (Fed. Cir. 1993, cert. denied, 511 U.S. 1069 (1994)), the Court stated that "Whether a claim is invalid for indefiniteness depends on whether those skilled in the art would understand the scope of the claim when the claim is read in light of the specification."

The Examiner states that the term "high moisture composition" in Claim 25 renders the claim unclear vague and indefinite because the metes and bounds for said recitation have not been explained in the claim language. Applicants respectfully traverse this rejection based on the remarks contained herein.

Applicants respectfully submit that the term objected to is fully defined, described and exemplified in the present specification.

35 USC § 112 does not require Applicants to redefine in the claim each term when it is sufficiently defined in the specification as in the present case. The present specification at page 10, lines 9-11 defines high moisture as "greater than about 50% moisture) foods".

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Accordingly, it is respectfully requested that this rejection be reconsidered and withdrawn.

The Rejections Under 35 USC § 102(b)

Claims 19-27 are rejected under 35 USC § 102(b) as being anticipated by De Boer et al. (JP 02227051). The Applicant has provided an English translation of the Canadian equivalent to this Japanese reference. The Canadian reference 2,006,132 is supplied in a supplemental IDS.

The Examiner states that De Boer et al. discloses a the preparation of a low caloric food comprising polyol fatty acid polyesters supplemented with dietary fiber.

Applicants respectfully traverse this rejection based on the remarks contained herein.

Under § 102, anticipation requires that all the Claim elements appear in a single prior art document. "A Claim is anticipated only if each and every element set forth in the Claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... Claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

The present invention requires in Claim 19 and 21 a composition comprising an amount of a polyol fatty acid polyester administered to a mammal wherein the mammal is selected from the group consisting of cattle, cats, rats, rabbits, and primates. The De Boer et al. reference never teaches or suggests a composition comprising an amount of a polyol fatty acid polyester given to a mammal selected from the group consisting of cattle, cats, rats, rabbits, and primates. De et al. discloses use of the compositions in human beings. See Page1, lines 19-24.

The present invention cannot be anticipated by this reference. Since De Boer et al. does not disclose each and every element of the present application, it cannot as a matter of law anticipate the present application.

Reconsideration and withdrawal of the rejection on this basis are requested.

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Conclusion

In light of the remarks and amendments presented herein, Applicants respectfully submit Claims 19-27 are allowable over the cited reference. Reconsideration and allowance are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicant's undersigned attorney for further discussion.

Respectfully Submitted,

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